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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/724,833	12/02/2003	Thomas Nelson	17357.01302US	2811
38647	7590	08/23/2006	EXAMINER	
MILBANK, TWEED, HADLEY & MCCLOY LLP INTERNATIONAL SQUARE BUILDING 1850 K STRET, N.W., SUITE 1100 WASHINGTON, DC 20006			ROOKE, AGNES BEATA	
			ART UNIT	PAPER NUMBER
			1653	

DATE MAILED: 08/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/724,833	NELSON ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Agnes B. Rooke	1653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 29 June 2006.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-16, 19-25, 27-31 and 33-41 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 1-16, 19-25, 27-31, 33 and 36-41 is/are allowed.  
 6) Claim(s) 34 and 35 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____.<br>_____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 04/14/2006 has been entered.

The amendments to the claims filed on 06/29/2006 have been acknowledged.

### ***Claims***

Claims 1-16, 19-25, 27-31, and 33-41 are pending.

Claims 5, 17, 18, 26, and 32 are cancelled.

### ***Priority***

This application claims priority to 60/430,476, filed on 12/03/2002.

### **New Rejections necessitated by the amendments in the claims**

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 34 and 35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 34 and 35, a necessary step in a method claim is missing, where the agent is linked to cholesterol.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 34 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Versluis et al., J. Pharmacol. Exp. Ther., (1999), 289(1), p. 1-7.

It is noted that at [0032] of the specification the artificial LDL particles comprising EYPC, cholesterol oleate, and ApoE3 form solid particles comprising a solid lipid core consisting of cholesterol, cholesterol esters, a random active agent, a middle layer consisting of the fatty acid chains phosphatidylcholine, and a surface layer consisting of phospholipids head groups and ApoE3. At [00103] EYPC and cholestryloleate dissolved in methanol and chloroform and evaporated under inert gas nitrogen at 4°C. In Versluis et al. the mixture of EYPC, <sup>3</sup>H-CO, and LAD, the solvent dichloromethane was also evaporated in nitrogen at 4°C. At [00103], the evaporated EYPC and cholestryloleate was hydrated using Tris-HCl buffer, at pH 8, containing 0.1M KCl and sonicated for 1 hr at 18 µM output under the natural gas nitrogen. This same procedure is performed by Versluis et al., except the inert gas argon was used. At [00104] the

liposomes were incubated with ApoE for 30 minutes at 37°C at 1:10 ratio. This same procedure is performed by Versluis et al.

The particle size of the liposomes of Versluis et al. is taught at page 3, right column, to be 29.3 (plus-minus 1.1) nm, which is a diameter of between 15 and 50 nm and 20-30 nm.

### ***Conclusion***

Claims 1-16, 19-25, 27-31, 33, and 36-41 are allowable. Claims 34 and 35 are not allowable.

Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

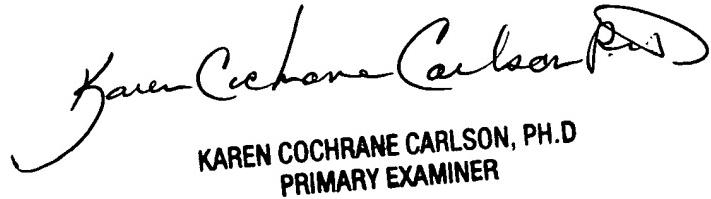
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Agnes Rooke whose telephone number is 571-272-

2055. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jon Weber can be reached on 571-272-0925. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for unpublished applications is available through Private PAIR or Public PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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*Karen Cochrane Carlson* 

KAREN COCHRANE CARLSON, PH.D  
PRIMARY EXAMINER